HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 518 of 2007
Decided on: 14.6.2007.

Puran Dutt Sharma ..... Petitioner.

Versus

State of H.P. and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Acting Chief Justice.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the petitioner: Mr.Sandeep Kaushik, Advocate.

For the respondents: Mr.R.M. Bisht, Dy.Advocate General.

Deepak Gupta, A.C.J. (oral):

The petitioner by means of this writ petition has challenged the order (Annexure P-4) dated 15.2.2007/21.2.2007, passed by respondent No.2 Deputy Commissioner, Sirmour at Nahan, H.P., whereby the petitioner has been removed from the post of Panchayat Member, Gram Panchayat Ranaghat, Block Rajgarh, District Sirmour.

The brief facts of the petition are that elections to various Panchayati Raj Institutions including Gram Panchayat Ranaghat, Block Rajgarh were held in December, 2005. The petitioner was duly elected as member of the Gram Panchayat Ranaghat. No election petition was filed against the election of the

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Whether reporters of local newspapers may be allowed to see the judgment? Yes

petitioner. However, a complaint was addressed to the Speaker of the H.P. Legislative Assembly on 28.10.2006 in which it was alleged that the petitioner herein is working as a sales man in the Co-operative Society in Village Shargaon. Keeping in view the provisions of Section 122(6) of the Panchayati Raj Act, the Deputy Commissioner Sirmour held that since the petitioner was working as sales man in the Co-operative Society in Village Shargaon, he was ineligible to continue as panchayat member. The case of the petitioner is that he was working as salesman prior to the election and his election could have been challenged only by means of an election petition and action could not have been taken under any other provision of law for his removal from the elected post.

Reliance has been placed by the petitioner on the judgment of a Division Bench of this Court in **Surinder Singh Banolta** v. **State of H.P. and others**, **Latest HLJ 2003 (HP) (DB) 782**. This Court after dealing with the provisions of Section 122, 131, 162, 163 and 174 of the H.P. Panchayati Raj Act and Article 243-O of the Constitution of India has held as follows:

> "9. Clause (ii) of sub section (2) of Section 122, however, deals with the issue of the person encroaching upon any land belonging to the municipality etc. but, at a point of time after the election process is over. It is in this context that the expression "for being" as occurring in clause (1) of Section 122 (supra) in so far as an office bearer is concerned assumes relevance because there can be situations where a person after having been elected as a Member of Zila Parishad encroaches upon any land belonging to a municipality and in such a fact situation, a question may arise as to whether, at a stage when the election process is already over, he has encroached upon such a land and that issue, in terms of clause (ii) (supra) would be decided by the Deputy Commissioner. At the risk of repetition, we may reiterate the legal position and summarise it as precisely as possible, in the following Para.
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> 10. If the issue of encroachment upon a land relates to a time period prior to the holding of the election or during the process of election, it can be decided by the authorized officer and if the authorized office comes to a conclusion that the person who proposes to contest the election has encroached upon the land in question, he being disqualified in terms of clause (c) of sub section

(1) of section 122, an order can be passed by the authorized officer declaring him to be so disqualified and then debarring him from contesting the election (see clause (i) of sub section (2) of Section 122 (supra).

11. If, however, a person was not an encroacher of the land in question at a stage during the process of the election or prior to it, (as far as the election goes), and if the allegation is that he encroached upon the land after the election process is over, in other words, the allegation is that he encroached upon the land after having been chosen as a Member of the Zila Parishad, such a question has to be referred to be Deputy Commissioner for being decided by him and if he comes to a conclusion and renders a finding that indeed such a person had encroached upon the land after having been chosen as a member of Zila Parishad, he is disqualified "for being" a member of Zila Parishad and thus the natural consequence would follow. This is the mandate and the scope of clause (ii) of sub section (2) of Section 122 (supra).

12. What could be the natural consequence and in what manner the Deputy Commissioner decided such an issue in terms of clauses (2) (supra) has been indicated in Section 131 of the 1994 Act, relevant extract whereof reads thus:

"(1) if any person having been elected as an office bearer of a

a) subsequently becomes subject to any of the disqualification mentioned in section 122 and such disqualifications is not removable or being removable is not removed;

b) absents himself from three consecutive meetings of the Panchayat or its Committee or does not attend half the number of meetings held during the period of six months without the leave of the Panchayat;

he shall, subject to the provisions of sub-section (2) cease to be such office bearer and his office shall be vacant:

Provided that were an application is made by an office bearer to the Panchayat for leave to absent himself under clause (b) and the Panchayat fails to inform the applicant of its decision on the application within a period of one month from the date of receipt of the application, the leave applied for, shall be deemed to have been granted by the Panchayat.

(2) In every case the authority competent to decide whether a vacancy has occurred under sub-section (1) shall be the Deputy Commissioner in respect of Gram Panchayat and Panchayat Samiti and the Director in respect of Zila Parishad who may give his decision either on an application made to him by any person or on his own motion. Until the Deputy Commissioner or the Director, as the case may be, decides that the vacancy has occurred, the person shall not ceased to be an office bearer.

> Provided that no order shall be passed under this sub section against any office bearer without giving him a reasonable opportunity of being heard."

The State had filed special leave petition against this judgment, which was dismissed by the apex court.

This judgment applies on all fours to the present case because in the present case also, the petitioner was admittedly engaged as sales man prior to his election as member of the gram panchayat and even though he may have been disqualified under Section 122(6), such election could only have been set aside in an election petition. The provisions of Section 131 could have only be invoked in case violation had taken place after the election.

In view of the above discussion, the writ petition is allowed and the order of the Deputy Commissioner, Sirmour, dated 15.2.2007/21.2.2007 is set aside and the removal of the petitioner from the membership of the Gram Panchayat Ranaghat is set aside. No order as to costs.

CMP No.909 of 2007:

In view of the final disposal of the writ petition, the application also stands disposed of.

(Deepak Gupta), ACJ.

(V.K. Ahuja), J.

June 14, 2007. (trs)

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

LPA No.22 of 2006

Judgment for consideration please

(V.K. Ahuja), J.
28.5.2007

Hon'ble the Chief Justice

I agree/do not agree

(V.K. Gupta), C.J.

Hon'ble Mr.Justice V.K. Ahuja, J.

List for pronouncement of Judgment on May , 2007.

(V.K. Ahuja), J.

Court Secretary